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ABSTRACT

The growth of federal influence on American higher education and the roles of state and local governments are discussed. The shift of power to a central government and precedents that over the years have established federal involvement in educational issues that are not directly enumerated in the Constitution are addressed. A decision that affirmed the right of the federal government to establish the conditions under which grants-in-aid may be made also strengthened the position of the federal government and ultimately affected in direct ways all educational institutions. One way of identifying the level of involvement of the federal government in education is in terms of the amount of the funds educational institutions derive from federal sources. Four categories of federal involvement in education are: establishing and maintaining institutions; identifying issues and influencing educational policy through advisory committees or commissions; providing categorical assistance through grants-in-aid; and influencing policy and operation through issuing specific regulations concerning eligibility for federal funds. The states differ in the degree of centralization of authority and control, and the financial support of the schools is based upon the combination of state and local support. (SW)

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This is one of a series of papers issued under the auspices of the Higher Education Program at the University of Denver. The papers are not issued on a predetermined basis but are published in this form as staff members and/or advanced students in Higher Education have examined topics of current concern and prepared statements that may be longer than that of the usual journal article and yet are of sufficient general interest to merit distribution to the general higher educational community. These papers provide a way for the program at the University of Denver to share some of its work with a wider audience.

The Higher Education Program at the University of Denver occupies a unique position, as does the School of Education, of which it is a part, in that it is located within the College of Arts and Sciences of the University. The School of Education is an integral part of the College of Arts and Sciences, one of the six graduate degree-granting units within the university. The other units are the College of Business, the College of Law, the Graduate School of Librarianship, the Graduate School of International Studies and the Graduate School of Social Work.

As a unit within a department of the College of Arts and Sciences, the Program in Higher Education has a distinct advantage in that it may draw upon the resources of other departments within the College as well as participate in cooperative work with those departments. This is important, because in the sequence leading to the Ph.D. in Higher Education, students complete 40 of the required 90 quarter-hours in post-Master's study in one field outside of professional education. Students also complete a comprehensive examination in the cognate field as well as in Higher Education. Among the cognate areas selected by students in Higher Education have been the following: biological sciences, English, history, librarianship, mass communications, mathematics, philosophy, physical education, psychology, professional psychology, religious studies, social work, sociology, speech communication, business, international studies. Frequently, the student's dissertation committee will include representatives from these cognate fields.

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- No. 1 The Evaluation of Overseas Study Programs: Two Case Studies, Central American and Spain (February, 1972) by Allan O. Pfnister.
- No. 2 The Evaluation of Study Abroad Programs Under the Auspices of American Colleges and Universities: U.S. Regional Accrediting Agencies Look at Study Abroad (December, 1972) by Allan O. Pfnister.
- No. 3 Women, Minorities and Higher Education: Four Students Papers, Edited by James R. Davis.
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- No. 9 Students at the University: What Is Known, What Is Said (May, 1975) by James R. Davis.
- No. 10 University Faculty in Crisis: Collective Bargaining, Tenure, Faculty Development (September, 1975) edited by Allan O. Pfnister, with William Pickett, Jane Muller, Laurence Rafal, Donald Scott, James D. Hirsh, Joan Ehren, Margaret Wick, Abbas Kasraian, Rolf Trautsch.
- No. 11 Formative Influences in the Evolving Structure of American Postsecondary Education (September, 1978) by Allan O. Pfnister.

The hiatus between the issuing of the tenth paper in September, 1975 and the eleventh paper in September, 1978 was occasioned by the heavy involvement of principal staff in higher education in administrative assignments within the university. James R. Davis served as Assistant and Associate Vice Chancellor for Academic Affairs during 1975-77 and since has been Director of the School of Education. Allan O. Pfnister served as Executive Vice Chancellor, then as Acting Chancellor during 1977-78. Both continued to teach within the higher education program, assisted by part-time and interim staff. During 1975-77, Dr. Clifton Conrad, a graduate of the Center for the Study of Higher Education at the University of Michigan, served on a two year appointment as Assistant Professor of Higher Education. Dr. Conrad presently is Associate Professor of Higher Education at the University of William and Mary.

Copies of the first two papers are no longer available, and only limited copies of issues of 4-8 are still available. Copies of such papers as are still available may be secured by writing to : The Program in Higher Education, School of Education, University of Denver, Denver, Colorado, 80208.

This twelfth "Occasional Paper" was prepared for discussion at Eberhard-Karls-Universität, in Tübingen, West Germany. The German-American Institute of Tübingen was in the spring of 1979 presenting a series of lectures on American society. The undersigned, on invitation of the Institute and the University at Tübingen, participated in the discussions during the week of March 12-16. This paper was discussed on March 13, and in a subsequent meeting on March 15 a paper on "Current Developments in Continuing Education in the United States" was presented.

Since 1974 the University of Denver and the University of Tübingen have developed a close relationship. The president of the University of Tübingen was a guest at the University of Denver in 1974 and 1978. The undersigned has visited the University on a number of occasions since 1974. During 1975-76 and 1976-77, a graduate of the University of Denver served as an intern in the Akademisches Auslandsamt of the University of Tübingen and during 1976-77, the Director of the Auslandsamt served, on an exchange basis, as an intern at the University of Denver. Since 1977 the two universities have maintained a student exchange program.

One of the areas of interest in the Higher Education Program at the University of Denver has been comparative higher education, and the undersigned as the senior staff member in higher education, increasingly has made this a particular field of inquiry. One of the courses in the higher education sequence is based on comparative studies of postsecondary education in England, France, Germany and the U.S.S.R. Regular trips to Europe and the U.S.S.R., as well as participation in international conferences help to maintain information on a current basis.

--Allan C. Pfnister

FEDERAL, STATE AND LOCAL GOVERNMENTS AND THE DEVELOPMENT OF
AN EDUCATIONAL SYSTEM IN THE UNITED STATES OF AMERICA

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Preface

As I begin this lecture, may I establish two conditions: (1) While I shall be referring to education at all levels, from the elementary school through the university, the major emphasis will be on postsecondary, or, higher education; it is this portion of American education with which I am most familiar and with which my professional career is identified. (2) Federal systems of government have much in common, particularly as they are contrasted with unitary systems, but they also differ sufficiently to make it necessary, I believe, to give some attention, in this case, to the evolution of the federal system in the United States in order to provide a context for interpreting current developments; the first part of my paper will provide some of that background.

I want to observe also that the time between the late 1960's and the beginning of the 1980's probably will be viewed by historians in the future as one of the critical transition periods in the development of American education and particularly of American higher education. It is not only that the nearly two centuries of more or less continuous growth in numbers of students and institutions is coming to an end, with stabilization, if not actual decline as the new order, but with the development of statewide coordination and federal regulation at levels beyond anything imagined a few short years ago we have additional new forces contributing to the reshaping American postsecondary education. (The term "postsecondary" is one that has been employed increasingly as a descriptive term following its introduction in a federal report issued in 1973.) The various forces coming to bear upon postsecondary education during these years may be leading to changes no less dramatic than those witnessed during the decades following the passage of the Morrill Act in 1862 creating the land-grant universities.

Among the forces influencing American education, both postsecondary and that of the earlier years, the increased role of the federal government may well be one of the most significant. Two decades ago, in August 1958, at a conference of chief justices of the state courts, attention was directed to the significant increases in federal power. A committee on federal-state relations reported to the conference:

The outstanding development in federal-state relations since the adoption of the national constitution has been the expansion of the power of the national government and the consequent contraction of the powers of the state government. To a large extent this is wholly unavoidable and indeed is a necessity, primarily because of the improved transportation and communication of all kinds and because of mass production. On the other hand, our Constitution does envision federalism. The very name of our nation indicates that it is composed of states. The Supreme Court of a bygone day said. . . "The constitution in all its provisions, looks to an indestructable Union of indestructable States."¹

The judges thus clearly expressed the nature of the tension between the central government and the constituent states, a tension of which educational institu-

tions have become keenly aware in recent years as power in the United States becomes more centralized.

James Perkins suggests that the move toward more centralized authority is not peculiarly a development in the United States but that it probably characterizes a large number of nations. In a volume published by the International Council for Educational Development in 1972, he states that the "traditional independence and autonomy of institutions is giving way to state or national coordinating bodies," and that in many countries this "has led to the increased governmental participation in the affairs of universities and colleges." The centralization of power occurs as "higher education has become a national concern and as local governments have become increasingly unable to support these universities."²

The increase in funding by a central or federal source brings with it new controls. As the "investment" of the federal government has become greater, so has the accountability of the institutions receiving funds increased. In the United States institutions are being asked in increasing measure to establish clearly that they are in compliance with a growing list of federal regulations even before they can be considered eligible to apply for the funds upon which more and more of them are becoming more dependent.

The growth of dependence upon federal funding has been dramatic in the United States. In the mid-1950's the debate in American educational circles was over whether educational institutions, from the primary grades to the universities, should accept federal funds. In the higher educational sector in the early 1960's college and university administrators readily agreed with statements that openly opposed federal support of higher education. There was, as one writer observes, a "basic and instinctive objection to the general proposition of federal support to higher education."³ As recently as 1964 a Committee on Financing Higher Education, sponsored by the American Association of Universities, strongly objected to the expansion of federal activities in higher education, and one could refer then to the "American tradition of education as a state-local and private responsibility" being "more deeply rooted than it appears on the surface."⁴ But even as the AAU committee was objecting to the expansion of federal activities in education, the Educational Facilities Act, which provided federal funds for the construction of certain new facilities on college and university campuses, was passing through Congress, and few American institutions subsequently neglected the opportunity to tap this new source of funds for greatly needed capital expansion. A few years later, by 1971, the objections to federal assistance seem to have quieted sufficiently for another association of higher educational institutions, the Association of American Colleges, to encourage the leaders of the nation's private colleges to organize in launching a campaign for increased federal financial aid to these institutions. The question had now turned from whether to how much and how soon.

But let us now review in a more systematic way some of the steps by which federal power in education has grown.

The Growth of Power of the Central Government within a Federal System

A federal system of government is based upon a division of political power between the central authority and the constituent parts, with the respective spheres of responsibility defined in a constitution or equivalent document. The constituent parts of a federal system maintain an integrity and identity of their own; while they share certain powers and responsibilities with a central government, they are not to be viewed as creations of the central government. Depending upon the constitutional provisions, a federation is strong or weak, with more or less authority lodged in the central government. Under the Articles of Confederation (1782-1789), the United States of America would have to be classified

as a weak federation; Congress possessed only such authority as the states could agree to grant unanimously. Under the Constitution formulated in 1789, the United States moved toward a strong federation, and the central government took on more and more authority over the constituent states. Within a dynamic and growing society, new problems and conditions that extended far beyond state boundaries called for new legislation that progressively shifted more power to the central government.

In the opinion of the conference of chief justices in 1958 this shift of power to a central government was unavoidable; indeed, it was necessary to meet the new requirements laid upon the nation, although the framers of the Constitution in 1787 sought to keep a clear distinction between matters primarily local and matters primarily of national concern in the division of powers between national and state governments. DeTocqueville early identified the task set before the new nation.

The first question which awaited the Americans was so to divide the sovereignty that each of the different states which composed the Union should continue to govern itself in all that concerned its internal propriety, while the entire nation, represented by the Union, should continue to form a compact body and to provide for all general exigencies. The problem was a complex and difficult one. It was as impossible to determine beforehand with any degree of accuracy, the share of authority that each of the two governments was to enjoy as to foresee all of the incidents in the life of a nation."⁵

One of the "Federalist" papers described the relationship:

The powers delegated by the Constitution to the Federal Government are few and defined. Those which are to remain in the State government are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concern the internal order and prosperity of the state."⁶

Over the years the Federal government of the United States has grown in power as it has responded to pressures, "pressures from without such as war and other international tensions, and from within, such as those generated by private-interest groups." The net result is that the federal government resembles "nothing so much as a patchwork quilt; new programs are started, and old ones change direction and emphasis as a complex of influences bear on those responsible for policy making."⁷ As the powers of the federal government have grown through legislation, interpretation by the courts, through executive action, there have been the inevitable clashes between the central government and the constituent states.

It is frequently observed that the Constitution of the United States provides no mandate for federal involvement in education; indeed, education is considered a function reserved to the individual states. By the Tenth Amendment to the Constitution of the United States, an integral part of the Constitution when it was adopted in 1791, it is provided that, "The powers not delegated to the United States by the Constitution, or prohibited by it to the States, are reserved to the States respectively, or to the people.

Although in the form in which it was adopted the Constitution does not mention education, the constitutional convention did discuss the appropriateness of including the maintenance of education as a power of Congress. On August 18, 1787 James Madison introduced a series of propositions relating to the powers of Con-

gress and included among them, "To establish an University" and "To encourage by premium & provision the advancement of useful knowledge and discoveries." Charles Pinckney included among the enumerated powers of Congress in a list submitted the same day, "To establish seminaries for the promotion of literature and arts and sciences." Both sets were referred to the Committee on Detail, and no further note on education is to be found in the records of the Convention until September 14, when the entry appears: "Mr. Madison and Mr. Pinckney then moved to insert in the list of powers invested in Congress a power-- 'to establish an university in which no preference would be allowed on account of religion.'"⁸ This particular motion was voted down with 4 ayes and 6 noes, 1 divided.

The delegates to the Constitutional Convention were clearly opposed to giving Congress any more enumerated powers than was necessary. A late version of the Constitution opened the way, however, to rather broad possibilities. In Article I, Section 8 the words appear, "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States." This "general welfare" clause had been included with slightly different wording in the Articles of Confederation, but had been voted down as a part of the Constitution by the Convention on August 22, 1787. Yet the words are in the final version as adopted. Forty years later, James Madison, in a letter to Andrew Stephensen, reconstructed the process by which the words, once discarded, came back in later versions. On September 4, he noted, a fairly complete rendering of the Constitution as submitted by the Committee on Detail contained in the introductory statement enumerating the powers of Congress the words "general welfare," and from that point on, according to Madison, the words "past undisturbed thro' the subsequent states of the Constitution."⁹ Though obviously giving much latitude to Congress to act, based on how "general welfare" is interpreted, this particular clause was not challenged in the courts until the 1930's.

Much more debated, and early tested in the courts were the concluding words in the section on enumerated powers which allowed Congress, "To make all laws that shall be necessary for carrying into execution the foregoing powers, and all other powers invested by this Constitution in the government of the United States, or in any department or office thereof."¹⁰ While the Tenth Amendment appeared to circumscribe federal powers, the "general welfare" and "necessary and proper" clauses kept the possible range of action open and broad.

And Congress did act. Those holding fast to the sovereignty of the states then challenged the actions of Congress. The Courts were called upon to decide the limits within which Congress, according to the Constitution, could act. The court decisions tended to extend the powers of the legislature. It is not properly within the scope of this paper to trace these decisions and how they shaped the powers of the central government, but it may be of use to note two of the decisions that appear to have been particularly significant.

In February, 1791, a bill to establish a national bank was passed. Alexander Hamilton had asked for such an establishment in order to be able to deal with the new government's monetary and financial problems. President Washington at first refrained from signing the bill until he was sure of the constitutionality of the measure, since to establish a bank was not among the enumerated powers of Congress. Hamilton argued that Congress had both enumerated and implied powers, and that the implied powers were derived from the "necessary and proper" clause. In 1811 Congress refused to grant a new charter to the bank, and a number of states chartered their own banks, many of which failed to follow sound fiscal principles. The nation was clearly hampered without a national bank, and finally a bill to charter a new bank for twenty years was passed on April 10, 1816. The bank was unpopular and several states took action either directly to prohibit the national bank from operating within their borders or to levy heavy taxes on it to discourage its activity. In 1818 Maryland levied a tax against the Baltimore branch of the national bank. The bank went to the courts; the state courts upheld the action,

whereupon the bank went to the United States Supreme Court. The decision in *McCulloch vs. Maryland* was handed down in 1819, and Chief Justice John Marshall took the opportunity to expound at length on the Constitution and the American Union. The Court took the position of upholding the principle of national sovereignty and broad construction. Marshall said that the federal government rested directly upon a popular basis, deriving its authority from the people rather than from the state as sovereign entity. While sovereignty was limited and divided between the states and the national government, in those aspects in which the national government could act, it was "supreme within its sphere of action." While the right to establish a bank was not among the enumerated powers of Congress the national government also possessed implied powers, since every legislature by its very nature has the right to select appropriate means to carry out its powers. From the "necessary and proper" clause he pointed to the test of constitutionality: "let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."¹¹

Further, since acts of Congress are the supreme law of the land, in *McCulloch vs. Maryland*, when state law conflicts with national law, national law must ever prevail. The state could not tax the national bank, for if that were possible, the power of taxing involving the power to destroy would put the continuance of the bank under the will of the states rather than under the national government. But the national government could not be dependent upon the states.

Another decision which strengthened the position of the federal government and ultimately affected in direct ways all educational institutions affirmed the right of the federal government to establish the conditions under which grants-in-aid may be made. This is the decision in *Massachusetts vs. Mellon* in 1923. The federal government had shared funds with the states for over a century before the principle of grants-in-aid was challenged. The first grants were in the form of land for the support of schools. A federal surplus was distributed among the states in 1837. The Morrill Act of 1862 distributed millions of acres of public land to the states. Before 1911, however, there was very little in the way of systematic control by the federal government over the use of the grants. The Weeks Act of 1911 established the first modern form of control; it appropriated money to the states for forest fire prevention, and required a series of steps with which the states had to comply to receive the funds. Subsequently, the Smith-Lever Act of 1914 provided for state-federal cooperation in agricultural extension work. The federal road act of 1916 appropriated money for state highway programs, and the Smith-Hughes Act of 1917 granted money to the states for vocational education. The Fess-Kenyon Act of 1920 provided money for disabled veteran rehabilitation by the states. In 1925 grants-in-aid to the states totaled some 93 million dollars in comparison to 11 million in 1915.

The challenge to the conditions attached to grants-in-aid was in response to the Sheppard-Towner Act of 1921 which subsidized state infant and maternity welfare. The state of Massachusetts challenged the constitutionality of the act because of the stipulations under which funds were made available to individuals under the act. The case was dismissed on the grounds that the state could not institute judicial proceeding to protect citizens of the United States from the operations of the statutes of the United States. Justice George Sutherland, in delivering the opinion of the court, said that "the powers of the state are not invaded, since the statute imposes no obligation, but simply extends an option which the state is free to accept or reject." The statute did not "require the states to do or to yield anything," and if it were viewed that Congress enacted the measure with "the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding."¹² In other words, if the state receiving the funds did not wish to follow the requirements attached to the acceptance of the funds, the state could simply refuse the funds. The consequence of the decision in *Massachusetts vs. Mellon* was that "there

seems to be no effective way in which either a state or an individual can challenge the validity of a federal grant-in-aid."¹³

Through these and other decisions, as well as by the Acts of Congress, precedents have been established over the years both for federal involvement in activities not directly enumerated in the Constitution and for the federal government setting the conditions under which grants might be accepted.

The Extent of Federal Involvement in Education in the United States

One way of identifying the level of involvement of the federal government in education is in terms of the amount of the funds educational institutions derive from federal sources. It is difficult, however, to derive a single total for federal funds devoted to education in the United States. One of the major federal sources for statistics on education advises that the best one can do is to derive several totals, each of which will serve particular needs; the National Center for Education Statistics states that this "multiplicity is probably due to the many kinds of assistance provided, the differences in the manner of distributing assistance, the special circumstances which describe the program beneficiary as each program was legislatively tailored for its particular purpose."¹⁴ The basis for the difficulty in securing accurate information is that federal support for education is not definable as a single unified national plan. What we have instead is a "collection of individual programs and procedures, each individually enacted into law to support or accomplish a specific purpose."¹⁵ Thus, each program reflects a particular interest or a particular problem that some group is sufficiently concerned about that it thinks can be solved by a specific piece of national legislation.

This chaotic state of affairs is both condemned and defended. It is condemned by those who want to secure a more definitive picture of federal involvement. It is, understandably, defended by those who believe that the ambiguity has actually meant more support for education than would be possible under a unified approach. Even as the proposal for establishing a Department of Education at the level of the Presidential Cabinet is being debated, opponents of the proposal contend that if the Department were established and if all funds for education were channeled through and monitored by the Department, the extent of federal assistance to education would be reduced drastically. That is to say, if a single budget for all educational assistance could be identified, it would be much easier to modify or revise programs, or in times of financial stringency, to reduce a single identifiable budget, than to deal with the present multiplicity of programs scattered throughout federal agencies and departments. On the other hand, under the present conditions, with many agencies and departments involved and many interest groups represented, no one single total is identified, and the federal government is presumably more responsive to the concerns of various elements in the constituency.

The most recent summary provided by the National Center for Education Statistics shows an estimated \$25 billion provided through federal sources for American education (all levels) for fiscal year 1978 (October 1, 1977 through September 30, 1978).¹⁶ The funds are listed under eleven departments, seventeen agencies, commissions, administrative units, and a number of research and development projects. Each of these listings, however, is only a summary of other complex sets of programs and projects. Among the various departments and agencies, the Department of Health, Education, and Welfare distributed the largest amount of funds, some \$9 billion. One of the smaller spending units is the National Commission on Libraries and Information Science, which distributed an estimated \$1,870,000. In reporting these funds the National Center for Education Statistics cautions that the amounts shown are from the "federal vantage point."

That is, these are the funds identified by federal agencies as devoted to education, and the amounts include funds that support individuals and non-school agencies involved in educational programs but not necessarily acting directly under educational institutions and thus probably not included in any summary the institutions would furnish regarding federal funds received.

If we take the estimated \$25 billion dollars for 1978, from the "federal vantage point," and compare these dollars with the total estimated expenditures for all educational institutions--also based on data gathered and supplied by NCES--we have at least a rough estimate of the extent of federal involvement in education in fiscal year 1978. The NCES estimates that educational institutions at all levels spent during the academic fiscal year of 1977-78 approximately \$142.3 billion. The \$25 billion (actually, slightly more) identified as federal money for education thus constitutes almost 18 percent of the funds for education. Elementary and secondary schools received nearly \$6 billion dollars from the federal government, spent just over \$92 billion during the year, and thus derived approximately 6 percent of their funds from the federal government. Higher educational institutions spent just over \$50 billion and received over \$8 billion from federal sources, to constitute nearly 17 percent of the total income. The \$14 billion directed to elementary and secondary schools and higher institutions, however, constitutes only 56 percent of the funds the federal government says went to education. Of the remaining \$11 billion, over \$4 billion went to vocational, technical and continuing education and nearly \$7 billion was categorized only as "other" expenditures of education. Even the NCES data provide only rough bases for estimates!

Dr. Wilbur Cohen, for eight years an administrator in the Department of Health, Education, and Welfare, part of the time as Secretary, estimated in the early 1970's that the federal government provided approximately 25 percent of the funds expended by all colleges and universities in the United States and approximately 7 percent of the funds expended by elementary and secondary institutions. In using the proportion of 25 percent, he included loans, social security payments to students, funds for construction of non-academic facilities (dormitories, housing), indeed, all funds that in some way benefited higher institutions.¹⁷

The National Commission on the Financing of Postsecondary Education provides another estimate for the early 1970's. Noting that the federal government at that time was providing almost \$4 billion in aid to students, the Commission demonstrated that while most estimates of sources of income for postsecondary institutions fail to distinguish between that student fee payment that includes federal assistance and that which is a net payment by the student, its own estimates were able to take into account the original sources of funds. On this basis the Commission estimated that 20 percent of the income of postsecondary institutions was derived from student fees (net payments), nearly 32 percent from state and local governments, and over 27 percent from the federal government, with approximately 9 percent from private philanthropy and just over 12 percent from auxiliary enterprises and other activities.

While far from precise, it is not unreasonable to use figures such as 25 percent for postsecondary institutions and 7 percent for elementary and secondary institutions to suggest something of the proportion of annual expenditures for education in the United States supplied by the federal government. Such proportions only suggest, however, the nature of the impact of the federal government on education. It is sometimes less a matter of the amount of money supplied and more a matter of the kinds of regulations attached to the funds that more accurately identifies the nature of the impact. I shall address myself to federal regulations later in this paper.

Wilbur Cohen has provided a brief overview of the phases through which federal involvement in education appears to have passed. While these phases are in relation to postsecondary institutions, the sequence of events is not greatly different for elementary and secondary institutions. The first phase was from

1789 to 1862, when "higher education was of practically no direct concern to the federal government." The second, the beginning of which is marked by the passage of the Morrill Act, extends from 1862 to 1958 when "the first stages of concern became apparent." The third phase, which begins with the National Defense Education Act of 1958, covers the period of 1958 to 1963 when "federal concern began to blossom." The fourth phase, beginning with the Higher Education Facilities Act in 1963, extends from 1963 into the early 1970's and is the time when "the concern began to flower." The fifth phase, the current phase, is that in which "the federal government will play an even greater financial role and stimulus in the maintenance, diversity, productivity and creativity of education in all forms, sizes and dimensions."¹⁸ Most persons would agree that currently the role of the federal government is great; some would question whether the involvement is maintaining "diversity, productivity and creativity."

The Forms of Federal Involvement in Education in the United States

At the risk of over-simplification, may I suggest that there are four major ways in which the federal government has become involved in education in the United States. I am now concerned with much more than the amount of money the federal agencies may channel into education. I am trying to suggest the kinds of activity and the nature of the impact. The four categories of involvement are: (1) establishing and maintaining institutions; (2) identifying issues and influencing educational policy through advisory committees or commissions; (3) providing categorical assistance through grants-in-aid to educational institutions or to individuals engaged in educational programs; (4) influencing policy and operation through issuing specific regulations with which institutions must comply in order to be eligible to receive federal funds. The latter two categories of activities have become much more prominent in federal-education relations during the last two decades.

Establishing and maintaining institutions.--Among the proposals made during the Constitutional Convention, as I have already noted, was to include within the enumerated powers of Congress a provision for establishing a national university. Among the reasons given were that such an institution would give a sense of unity to the new country, that as a post-graduate institution it could provide training for those who would enter the civil service of the country, that it would set the pattern for other institutions in the country. These ideas were not expressed during the Convention, but were expressed as the concept of a national university was advanced both before and after the Convention.

The framers of the Constitution voted to exclude any mention of education, much less a national university. With regard to the university, the point was made that since the federal government was given control over the federal district, the District of Columbia, it could, if it so chose, establish an institution therein and no special provision in the Constitution was required to realize this objective.

In subsequent years proposals for a national university were advanced frequently. The first Presidents of the United States spoke with favor on behalf of such a project, and George Washington even left a bequest of stock for such an establishment. Congressional committees reviewed proposals, but no action was taken. In 1872 a bill was introduced in both houses of Congress and supported by the Committees on Education and Labor, providing \$20 million endowment for a national university. The bill was not passed. From 1872 to 1932 more than 60 bills were introduced on behalf of some form of national university. Indeed, discussions have continued sporadically to the present time.

Instead of a single national institution, the federal government has over the years established a number of specialized institutions, primarily directed at serving the military needs of the nation. The United States Military Academy

at West Point, initially given to heavy emphasis upon training in engineering, was established in 1802. The U.S. Naval Academy was created in 1845 by the Secretary of the Navy. Training for Coast Guard was provided in 1876, but the present Academy was located in New London only in 1931. A Naval Postgraduate School was established in 1804. The Merchant Marine School at King's Point, New York, came into existence in 1942. The Air Force Academy at Colorado Springs was established in 1954. Since 1951 the Air Force Institute of Technology has provided resident college work.

The foregoing institutions have been recognized as collegiate level institutions, authorized to award recognized degrees by regional accrediting agencies in the United States. In addition, the Department of Agriculture and the Department of Commerce have postgraduate schools, providing advanced instruction but not granting degrees. The federal government also maintains the Walter Reed Army Institute of Research, the Judge Advocate School at the University of Virginia, Oak Ridge National Laboratories. Between 1970 and 1972 the Community College of the Air Force was brought into being and now is authorized to grant certificates and the Associate in Arts degree, a diploma awarded by two-year community colleges in the United States.

Advisory committees.--Over the years the federal government has made use of advisory committees in the field of education. The results have been limited in the sense of the advisory body having any direct impact upon development of public policy. Any advisory committee is by its nature a temporary structure. The sheer demands of time usually make it impossible for members of the committee to engage in the direct investigation; much of the work has to be carried by an employed staff.

President Herbert Hoover appointed in 1931 the National Advisory Committee on Education to examine the extent of federal involvement in education. The Committee not only documented the extensive involvement of the government, but it also pointed to the complex and disorganized nature of that involvement: "The Federal Government has no inclusive and consistent public policy as to what it should or should not do in the field of education. Whatever particular policies that it seems to be pursuing are often inconsistent with each other, sometimes in conflict. They suggest a haphazard development, wherein policies of far reaching effect have been set up as mere incidents of some special intent to induce an immediate and particular efficiency...Without a comprehensive, forward looking, and coherent public policy in regard to education the present educational situation in the federal government cannot be greatly improved."¹⁹

In 1938, an Advisory Committee on Education appointed by President Roosevelt in large part reaffirmed the findings of the earlier committee. This committee recommended new federal grants-in-aid for improved appropriation of teachers and for educational research, planning and demonstration.

President Truman appointed a President's Commission on Higher Education in 1946. The Commission produced a 6-volume report between 1947-48. This Commission recommended significant expansion of the federal activities in higher education, including provision of federal grants to states for undergraduate scholarships, capital grants to states for facilities and equipment. The Commission emphasized the need for the development of public higher education in recommending significant expansion of educational opportunities at all levels. Considerable emphasis was placed upon community colleges and the provision of at least two years of education for some 48 percent of the population.

The Commission on Organization of the Executive Branch of the Government (Hoover Commission) in 1948 recommended the creation of a new department combining various welfare activities and education. The Commission noted that nine departments and agencies were making grants or entering into contract for research without coordination of the programs, that the government for many years had been involved in sponsoring agricultural research and more recently had given consider-

able sums for atomic and military research. The committee did not recommend that the programs be concentrated in the Office of Education, but rather that a new department be created. The second Hoover Commission recommended termination of loans for college housing and greater federal financial support for basic medical research. In 1953 the Department of Health, Education, and Welfare was created.

A report of the Commission on Intergovernmental Relations established in 1953 focused on general public education, particularly at the elementary and secondary level, and on such matters as school lunch programs, school construction and operation, federal aid to impacted localities, and vocational education. A White House Conference on Education in 1955 also focused on the concerns of elementary and secondary education and made strong recommendations for more federal aid for education at this level. There were also recommendations regarding strengthening the United States Office of Education.

In 1956 President Eisenhower appointed the Committee on Education Beyond High School. The Committee stated that the use of temporary and ad hoc committees was an inadequate approach to developing long range policy for education and strongly recommended that the President authorize the Secretary of Health, Education and Welfare to develop specific proposals "to further a continuous and orderly review of the development of the national and international governmental aspects of education beyond the high school." It also asked for specific procedures for implementing a number of proposals which it made in the report. In October 1957, the first Soviet satellite went into orbit, and American higher education was thrust into public attention and scores of legislative proposals moved to the forefront. Many of the proposals of the Committee, which otherwise might have been forgotten were taken up by Congress. One of the outcomes of Congressional concern was the passage of the National Defense Education Act of 1958, which provided assistance to state and local school systems for strengthening instruction in science, mathematics, modern foreign languages, and other subjects considered critical to national survival.

The 1970 Elementary and Secondary Education Assistance Programs Extension Act provided for the establishment of a National Commission on School Finance, and the Education Amendments of 1972 created a National Commission of Financing Postsecondary Education.

From 1929 to 1950 the general drift of commission reports was toward encouraging growth and diversity in the federal role. In the 1950's the reports picked up the same theme and encouraged more cooperative programs to broaden higher educational opportunities. In the 1960's the emphasis was upon increased federal funding and the development of a more coherent federal policy in education. Concern was expressed for developing programs to aid the disadvantaged, the metropolitan areas and to advance integration and racial equality. The call was for funding community action programs, metropolitan demonstration projects, education programs for the aging, industry-operated schools, cooperative groupings of colleges and universities, strengthening state departments of education. More and different kinds of student aid were proposed, support for professional, semi-professional and para-professional education and training was requested.

The mood of the 1970's has been to emphasize student rather than institutional aid, but concern has been expressed over the general financial problems of postsecondary institutions as reflected in the appointment of the National Commission on Financing Postsecondary Education.

The Education Amendments of 1972 established an Education Division in the Department of Health, Education and Welfare, headed by an Assistant Secretary for Education.

Within the federal government itself, a Federal Inter-Agency Committee on Education circulating a "Working Paper" in August, 1977, in which it observed:

Prior to the mid-1960's, some degree of administrative confusment seemed an inevitable, and undesirable, corollary to any federal involvement in education policy. This stemmed from the

basic fact that Congress had historically been wary of enacting legislation with the explicit purpose of advancing education. What programs were adopted, were approved because they purportedly served some other, more specific national purpose. Education is not, of course, among the functions directly granted to the federal government by the Constitution; this fact, plus the strong traditional American preference for local control of elementary and secondary education, forestalled development of any clear-cut federal role for nearly two centuries...In place of the unified and direct education policy, the nation had before it an amalgam of agricultural, defense, employment and assorted other programs with educational components.²⁰

The paper continued by noting that the Federal Inter-Agency Committee on Education was created in 1964 "as a mechanism designed to coordinate a host of programs located in diverse places," and that to the agency "now falls the responsibility of developing a single, administration-wide recommendation for what our national education policy should be."²¹

Thus, the federal government continues to use committees both inside and outside of federal structure to examine and develop policy. It is difficult to assess the direct impact of the statements made by these committees, and although some writers are prepared to dismiss them as singularly ineffective, the committees have at least expressed the mood of the particular period, have perhaps in some ways set in motion activities that have led to focusing upon issues by more clearly defining those issues. In the final analysis, however, the decisions that are made are political decisions. And political decisions are determined by the forces operating upon and within Congress and the Executive Branch at any one point in time.

Grants-in-aid.--Perhaps the most significant move on the part of the federal government was reflected in the passage of the Morrill Act in 1862. This Act granted 17,430,000 acres of public land for the support of colleges "where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and mechanic arts, in such manner as the legislatures of the state may respectively prescribe..."²² This act is particularly significant because of the nature of the initiative taken by the federal government to direct the course of education in a particular way.

The Morrill Act was not the first effort of the federal government to provide funding for education. While the states were still organized under the Articles of Confederation, the Ordinance of 1785 provided that prior to their sale, public lands which had been ceded to the Confederation "should be surveyed into townships 6 miles square and that section 16 should be reserved for maintenance of a public school."²³ The bill providing for the sale of 1,500,000 acres of public land to the Ohio and Scioto Companies in 1787 included the agreement that "not more than two complete townships...be given perpetually for the purpose of an University."²⁴ When Ohio became a state in 1802, it took over the management of the endowment, and Ohio University, subsequently founded at Athens, benefited from this grant. Each of the 21 states established after the turn of the century and before the Civil War, except Texas, Maine and West Virginia--in which there were no public lands available when they became states--received such grants of land. By 1857 some 60 million acres had been set aside for the common schools and 4 million acres had been designated for the endowment of universities.

Congress had in other ways made grants or purchased services. As early as 1830 the Treasury Department had negotiated a contract with the Franklin Institute of Philadelphia to investigate the causes of explosions of steam boilers.

The Morrill Act of 1862 provided 30,000 acres of land for each senator and representative for the endowment of agricultural and mechanical universities. This particular Act departed from the previous grants in that it specified that

a particular type of institution was to be established and certain steps were to be taken by the states, if they were to have the advantages of the grant. The stipulations were general enough, yet the stipulations were present. The long range impact of the Act was much greater than the immediate consequences. Every state in the United States has taken advantage of the grant, and there are presently some 70 institutions that can trace their origins to the provision of this Act. The Second Morrill Act of 1890 provided cash grants to the land-grant institutions.

The Act of 1862 established a precedent of sorts for federal intervention in education. Much of the subsequent activity of the federal government in education has been through grants-in-aid. In 1917 the Smith-Hughes Act provided grants to the states for the support of vocational education, and in 1918 the Vocational Rehabilitation Act provided grants for rehabilitation through training of World War I veterans. In 1919 an Act provided for the sale by the federal government of surplus machine tools to educational institutions at 15 percent of the acquisition cost.

The federal government began to provide fellowships for researchers with the Act creating in 1937 the National Cancer Institute which established the Public Health Service Fellowship program: subsequently other fellowships were authorized in legislation concerning other agencies.

In 1943 the School Lunch Idemnity Plan provided funds for local schools for the purchase of food for lunches served at the schools.

With the Service Man's Readjustment Act (Public Law 78-346, the "G.I. Bill") federal funding took a new turn in extending significant federal assistance for the broadening educational opportunities for the American public. This particular action had no precedent in American higher education and was, as one writer has suggested, "a social experiment on the grand scale."²⁵ During its lifetime, this particular bill supported almost 2.5 million students in institutions of higher education. It had a sudden and jolting impact upon colleges and universities. In 1939 the estimated enrollment in higher educational institutions was 1,365,000: by 1946 the enrollment was more than 2 million and by 1948 had reached 2.5 million. Thousands of persons who might not otherwise have considered collegiate education took advantage of the bill and entered the educational stream. The original bill was followed by another assisting veterans of the Korean War. Under that bill well over a million students enrolled in college, and with the two bills, federal support went to almost 3.5 million students. It seems clear that, "the G.I. Bills forged a strong link between the government and institutions of higher education."²⁶

Before the Second World War, research in colleges and universities sponsored by the federal government was virtually non-existent outside of the research specifically directed toward agricultural purposes. The federal government had supported laboratories and research in agriculture before the turn of the century, and federal expenditures for research at universities was at about \$13 million in 1940, with virtually all of it devoted to agriculture and distributed by the Department of Agriculture. Ten years later, at least 14 federal agencies were sponsoring research in colleges and universities and the federal expenditure had reached \$150 million. By 1958 the federal government was spending \$290 million in contract research centers and another \$120 million in agricultural experiment stations, including schools of agriculture. In addition, \$328 million went directly to colleges and universities. In all, the federal government was spending \$537.8 million in support of research and development in colleges and universities in 1958. The funds were overwhelmingly directed into the sciences and were primarily mission-oriented in that the funds were targeted for certain kinds of research requested by the federal government. The research funds were also changing the shape of education as a small number of universities accounted for major portions of the funds.

In the meantime, the National Science Foundation had been created in 1950 "to develop a national policy for the promotion of basic research in education and the sciences; to support basic scientific research and to appraise the impact of research on industrial development and the general welfare...to award scholarships and graduate fellowships in the sciences...to evaluate scientific research undertaken by federal agencies and to correlate the Foundation's research programs with other such programs."²⁷

Other acts followed between 1944 and the mid-1950's, but new directions were taken with the passage in 1958 of the National Defense Education Act. Even as the public continued to debate the appropriateness of federal involvement in education, the launching by the Soviet Union of Sputnik I on October 4, 1957, set in motion a series of events which led to another significant move on the part of the federal government into educational policy. A month later, President Eisenhower in a speech in Oklahoma City, argued that the Soviet Union in a brief span of forty years had converted itself into an industrial society with an impressive series of technological advances. He took the position that educational policies were related to national defense and called for improvements in the educational system as a matter of high priority in federal planning. In a special message to Congress on January 27, 1958 he outlined a program of education for national defense.

The Act subsequently passed by the Congress provided assistance to State and local school systems for strengthening instruction in science, mathematics, modern foreign languages, and other critical subjects. It provided funds for improving state statistical services, for guidance, counseling and testing services and training institutes. Title II began a student loan program that provided \$47.5 million the first year and reached 90 million in 1962. Graduates who entered a teaching career in elementary and secondary schools could cancel 10 percent of their loans for each year of teaching for a period of five years. Title III appropriated \$70 million for each of the next of the four fiscal years to be used for equipment and materials for the expansion and improvement of supervisory services in the public schools in the areas of science, mathematics, modern foreign languages. Title IV provided graduate fellowships for students to enter college teaching careers. Title VI appropriated money for language institutes and language centers in research as well for studies of history and anthropology, political science, economics, sociology, and geography about geographical areas where adequate instruction in those areas was non-existent in the United States.

The National Defense Education Act had a significant impact on the development of curriculum within the schools and on the preparation of specialists in certain selected areas. Millions of dollars were directed into curriculum. The Physical Science Study Committee (PSSC) created a new high school physics course. The School Mathematics Study Group developed the "new math." The American Institute of Biological Sciences Curriculum Study was funded by the National Science Foundation and began working on what became known as the BSCS Curriculum of public schools. Between 1960 and 1963 the Chemical Education Material Study produced texts, laboratory manual and teacher's guide for new curriculum in chemistry.

The National Defense Education Act included within it a recognition that the responsibility for education was still essentially a state and local concern. The Act included a prohibition in the following words: "Nothing contained in this act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration or personnel of any educational institution of the school system."²⁸ The prohibition was clear, but there is little question that the Act set in motion a series of significant developments that did influence in direct ways the curriculum

of American secondary and higher institutions.

A series of acts followed during the next years, but another turning point came with the 1964 Civil Rights Act. A Civil Rights Act of 1957, the first civil rights legislation since 1885, provided for the establishment of a Civil Rights Commission and Civil Rights Division in the Department of Justice and gave the Attorney General power to seek an injunction against any individual deprived of the right to vote and gave a judge the right to decide on a jury trial in a civil rights case. The Civil Rights Act of 1960 did not give any special authority to the Attorney General in cases of school desegregation, although it did contain provisions for actions against any form of violence occurring from attempts at desegregation and implementation of court orders. Then, the Act of 1964, under eleven different titles, extended the power of federal regulation in areas of voting rights, public accommodations, education and employment.

Title IV and Title VI were specifically directed toward the ending of school segregation, and Title VI stated that no person because of race, color, or national origin could be excluded from or denied the benefits of any program receiving federal financial assistance. This Title thereby required the withholding of federal funds in situations in which discrimination was evident. All federal agencies were required to establish guidelines to implement the policy. Aid to institutions and school districts that failed to comply with federal guidelines could be withdrawn. Title VI also placed the Office of Education in the position of enforcing compliance in that school systems would be required to show proof of compliance with the Civil Rights guidelines, and the Office of Education was in the position of determining the adequacy of the actions of the school systems. In significant ways, Title VI provided the precedent for direct regulation of institutions of higher learning and local public schools. It also set the precedent for future regulation of education to implement other policies.

The same year, the Economic Opportunity Act of 1964, which authorized grants for college work-study programs for students from low income families, established a Job Core Program and authorized support for work-training programs to provide educational and vocational training and work experience for underemployed youth, and opened the "war on poverty." The following year, the Elementary and Secondary Education Act of 1965 provided grants for elementary and secondary school programs for children of low income families, school library resources, textbooks, and other instructional materials for school children. The Higher Education Act of 1965 provided grants for university community service programs, college library assistance, library training and research, strengthening and developing institutions, teaching training programs, and undergraduate instructional equipment.

The federal government was now deeply involved in shaping both elementary and secondary and higher education. The Elementary and Secondary Education Amendments of 1966 added to the previous Act funds to assist states in initiating, expanding and improving programs and projects for the education of handicapped children at the pre-school, elementary, and secondary school levels.

In 1967 the Elementary and Secondary Amendments and the Higher Education Amendments extended programs to special groups of students. The 1968 Higher Education Amendments were particularly noteworthy in that they developed new programs to assist disadvantaged through counseling and tutorial programs.

The Education Act Amendments of 1972 included wide ranging measures. It created the Educational Division of the Department of Health, Education, and Welfare, the National Institute of Education and created the Office of Assistant

Secretary for Education. It made major revisions in the Higher Education Act of 1965 by adding new financial aid programs, the Basic Educational Opportunity Grant, a Supplemental Opportunity Grant, and a new State Incentive Grant program in which funds appropriated by the states would be matched to enable the states to establish their own scholarship programs. Subsequent acts have emphasized assistance to students rather than grants to institutions.

In 1974 a National Center for Education Statistics was created in the Office of the Assistant Secretary for Education.

There are now five major Office of Education Student Assistance Programs: Basic Educational Opportunity Grants, Supplemental Educational Opportunity Grants, College Work-Study, National Direct Study Loans and Guaranteed Student Loans. In the most recent Congress the debate up to the closing session had to do with extending the ceiling for eligibility for BEOG; and the ceiling was extended from \$15,000 to \$25,000. During the same session, also up to the last minute, opposing factions battled over whether or not the middle-income family would be assisted better through lifting the ceiling on eligibility for aid or through the provision of tax credits.

Federal regulations.--The fourth way in which the federal government has become more deeply involved in education has been through the extension of federal regulations. In 1976, one agency in preparing a handbook on federal-college relations, identified 439 separate statutory authorities effecting postsecondary education.²⁹ Another report explains further that there are 34 Congressional Committees and at least 70 sub-committees with jurisdiction over 439 separate laws effecting postsecondary education. The report goes on to observe that the number of pages of federal laws concerning higher education increased from 90 to 360 in 1976. Those laws have resulted in many more hundreds of pages of regulations. The number of pages in the Federal Register devoted to regulations affecting higher education grew from 92 in 1965 to nearly 1,000 in 1977.³⁰

Elementary and secondary education, less dependent upon direct assistance from the federal government, experience somewhat less direct regulation, but are by no means free of regulatory control. In the elementary and secondary public school area, the greatest impact has been that of the Civil Rights Act, which has led to direct action through the courts on school systems throughout the country. And, insofar as any of these schools makes use of federal funds for lunch programs and other such projects, it is also subject to general regulations regarding employment.

The growth of regulation began in the mid-1960's with the adoption of Civil Rights legislation and regulations, which first banned discrimination on the basis of race, color, religion and national origin. In response, to what I would view as appropriate social concerns, the regulations began to elaborate further and say that non-discrimination was not sufficient, that organizations were required to take "affirmative action" regarding employment procedures. These regulations were not directed specifically at schools but rather represented efforts to deal with broad social problems. Yet schools very quickly became involved in enforcement of these regulations or were soon included through specific legislation.

In the postsecondary area, the passage of the Buckley Amendment to the Family Rights and Privacy Act in 1974 was directed specifically at colleges and universities. This amendment granted students access to their educational records and limited access to others, including parents, and required institutions to inform all members of the campus community of their rights and obligations under the act.

In 1977 regulations were advanced implementing Section 504 of the Rehabilitation Act of 1973, requiring institutions to make changes in their physical facilities in order to accommodate the handicapped. This regulation touches all institutions at all levels, public and private, educational and non-educational.

The Education Amendments of 1976 included provisions regarding consumer protection and require college and universities to make known policy and practice in a wide variety of areas such as financial aid, refunds, and description of facilities, faculties, and educational programs. These various statements are subject to assessment in terms of "truth in advertising" standards.

The major legislative acts leading to regulations affecting higher education include the following:

1. Social Security Act of 1935. This Act provides benefits for employees based upon institutional and employment payroll contributions.
2. National Labor Relations Act of 1935. Governs collective bargaining procedures, and in 1969 the NLRB extended coverage of federal collective bargaining laws to college and university faculties.
3. Equal Pay Act of 1963. This act provides for equal pay and other conditions of compensation for equal work.
4. Employment Retirement Income Security Act of 1974. This Act was designed to deal with abuses of private pension funds, but colleges and universities and most other non-profit organizations are included under the regulations and are forced to revise and review their pension plans.
5. Civil Rights Act of 1964, Executive Order 11246 and Executive Order 11375. The Act and the executive orders relating to it prohibit discrimination on the basis of race, color, religion, national origin, age, and sex and require organizations receiving government funds to demonstrate an affirmative action effort.
6. Title IX of the Higher Education Amendment of 1972. This Title requires to equal treatment for women students in institutions of higher education.
7. Section 504 of the Rehabilitation Act of 1973. This Section implements the Act of 1973 prohibiting discrimination against the handicapped and requires institutions to take necessary steps to accommodate the handicapped.
8. Family Education Rights and Privacy of 1974. This is the Buckley Amendment and affords students rights to access of records.
9. Occupational Safety and Health Act of 1970. This Act sets certain standards regarding working conditions.
10. Education Amendment of 1976. The Student Consumer Education Act within these Amendments makes the government the consumer advocate for students and parents and requires institutions to publish policies and practices that may be assessed according to "truth in advertising" standards.

The move toward greater regulation began in the mid-1960's with the adoption of Civil Rights legislation. Since that time the number and extent of regulations has grown in significant ways. The regulations are usually "written to accomplish a worthy objective, such as preventing racial or sexual or assuring proper accounting of expenditures of government funds." But, as these regulations are developed, they invariably become longer and more detailed and more specific than the laws themselves. Many of the regulations are written for other segments of society, but educational institutions are invariably effected. Colleges and universities argue that the regulations often overlap and even conflict. The president of one institution has noted that the Department of Health, Education and Welfare emphasizes efforts to attract minority students while the Internal Revenue Service was questioning his institution in trying to prove that it was involved in reverse discrimination.

One study noted that the cost to institutions in implementing the various federally mandated social problems has increased. The University of Ohio report-

ed that while it was reimbursed \$3.00 per veteran for its paper work in administering education benefits under the G.I. Bill, it actually spends \$20.00 per person for the work involved. Ohio State University spent \$250,000 in staff time and computer charges to comply with rules protecting the privacy of student records. The President of Harvard University estimated that the total cost of administering five government programs, including equal employment opportunity laws, the Buckley Amendment, Occupational Health and Safety Rules, Environmental Protection and Pension Reform, has been in the vicinity of \$4.6 to \$8.3 million per year.

On June 28, 1978 the United States Supreme Court handed down a decision in a case titled Regents of the University of California (Davis) vs. Allan Bakke that illustrates the intricacies in the application of federal regulations. The University of California at Davis in what it viewed as an effort to act affirmatively to develop a more heterogeneous student body and to provide minority group members with access into professional education (medical education) developed a set of procedures such that in any class of 100 persons a general admissions program would make decisions for 84 places on the basis of a complex formula including grade point average, Medical College Admission Test Scores, interviews and some preferences based on geography or other special factors. Decisions for the remaining 16 places were separately made, with particular emphasis placed upon applicants of minority race or specified ethnic background. Mr. Bakke applied in 1972 for admission to two medical schools and was rejected. The following year, he applied to 11 medical schools and was again rejected. In 1974 he applied a second time to the Davis Campus and was denied admission, in spite of the fact that his grade point average and his MCAT scores were higher than most, or all, of the 16 minority applicants who were accepted.

Bakke filed suit in the Superior Court of California alleging that the special admissions program denied him admission on the basis of his race and that the program was in violation of the Equal Protection Clause of the Fourteenth Amendment; Article I, Section 21 of the California Constitution; and Section 601 of Title VI, Civil Rights Act of 1964. The latter Title provides that no person shall be excluded from participating in federally supported programs on the basis of race or color.

The Superior Court declared that the University should not consider race in admissions decisions and found that the special program was in violation of Title VI, but said that Bakke's admission would depend upon proof that he would have been admitted if there had been no special program. The case then went to the Supreme Court of California, which also held the admissions in violation of the United States Constitution and ordered Bakke's admission unless the University could establish that he would not have been admitted if there had been no special program. The University indicated it could not meet the challenge and the Court ordered that Bakke be admitted.

The case was then taken to the United States Supreme Court. The decision handed down was a split decision. Indeed there were three principal opinions, one by Justice Powell, one by Justices Brennan, White, Marshall and Blackmun (each of the latter three judges also ruled separate opinions), and one by Justice Stevens, joined by Justices Burger, Stewart and Rehnquist. On the one hand, the Court declared the special admissions program at Davis invalid, but at the same time it left the door open for institutions to design and employ race-conscious programs of admission that would take adequately under consideration individual rights protected by the Fourteenth Amendment; affirmative action programs in general were not invalidated nor were special minority admission programs. On the other hand, the particular form of the program at Davis was declared invalid.

Recently, the Office for Civil Rights faced a number of lawsuits charging

that it failed adequately to enforce federal anti-bias laws. Settling these suits with the various Civil Rights groups has led the Office to undertake more detailed and extensive reviews campus-by-campus to determine whether the institutions are complying with civil rights laws and whether their "affirmative action" plans for hiring and promoting women and members of minority groups are adequate.

It is obvious that it will take some time, and many more cases in the courts, to develop a reasonably comfortable working relationship between educational institutions and the federal government on these regulations.³¹

The Role of the State in Education

The constituent elements of the federal union that is the United States of America are fifty individual and sovereign states. In the process of tracing the growing involvement of the federal government in education, we could not but observe that the power of the central government has grown in other respects as well, and we may be inclined to question whether the states may properly be termed sovereign states. The passage of time and the pressure of social forces have brought limitations on state authority. Yet, the fact remains that the United States in a union of states, and the Constitution sought not only to establish the principle but to insure that the federal character of the union would be maintained. On that basis the enumerated powers of the federal government were few in number, and the intent of the Tenth Amendment was to delegate to the states powers not specifically identified with the federal government. Subsequent amendments to the Constitution as well as Acts of Congress, Executive initiative and Court decisions have broadened federal power and limited state power.

State responsibilities nevertheless are extensive. State and local governments maintain the primary public services that directly touch individual and community life. One summary developed in the early 1970's noted that state and local governments educate almost 4 out of every 5 students from kindergarten through graduate school, provide through their tax systems over 80 percent of the \$80 billion budgeted by all governments to finance the nation's public education system, provide welfare services and underwrite more than 40 percent of the \$29 billion budgeted for welfare payments and associated services in 1973. State and local governments are responsible for over two-thirds of the financial investment in protecting the individual's health and safety through the provision of public health services and facilities, fire protection, law enforcement services, and the like. States, counties, municipalities and school systems, as well as other local units, employed 11.8 million of the 14.7 million Americans who worked as civil servants in 1974.³²

State and local governments provide well over 80 percent of the revenue for elementary and secondary schools, nearly evenly divided between state and local governments. When the funds for private elementary and secondary schools, somewhat over \$9.5 billion, are subtracted from the totals, local and state governments provide over 90 percent of the income for the elementary and secondary schools in 1977-78. State and local government provide approximately 1/3 of the revenue for postsecondary institutions, and the larger portion, 30 percent, is derived from state funds. When public postsecondary education alone is considered, state funds provide well over 40 percent of the annual income in 1977-78.³

The State and Elementary-Secondary Education

Although responsibility for education was left to the several states, the states were slow in assuming this responsibility. By 1800 there were 16 states in the new Union. Of these, only seven had incorporated into their state con-

stitutions any provisions concerning the state's responsibility for education. The states in the Northeast were first to accept the responsibility, the Middle States leaned toward the parochial-school concept, and the Southern States ignored the matter entirely. For the most part, the early state laws on education were permissive in the sense that the people of the states were permitted to establish schools in their own communities, if they desired, and to tax themselves for school purposes, if they wished.

New York was the first state to appoint an officer to supervise the schools of the state when in 1812 it enacted legislation providing for the appointment of the first State Superintendent of the Common Schools. In 1837 Massachusetts created the first permanent State Board of Education, and the first secretary, Horace Mann, became one of the important figures in the development of American education. In 1852 Massachusetts passed the first compulsory school-attendance law. By 1970 practically all of the 50 states had established an eight-year program of public education for all children.

That the education at the elementary and secondary levels should be free was a matter over which many of the states debated during the middle of the 19th century. The Massachusetts law of 1827 had been the first state law to decree public maintenance and support of secondary schools, but it was not until 1874, when the Michigan Supreme Court, upholding the city of Kalamazoo declared that the secondary school was a legal and proper part of the states public school system. One of the citizens of the city had brought suit to deny the right of the city to levy taxes in support of the secondary school.

While the state has responsibility for education, the actual operation of schools is generally delegated to local education agencies. These units, the school districts, are corporations under the jurisdiction of boards of education, and they determine the location and size of schools, the type of educational programs offered and the amount of financial support provided locally. Prior to 1940 there were 117,000 school districts in the United States. Reorganization and consolidation has been underway since the 1940's, and in 1973-74 the total had decreased to 16,700 separate districts.

Public schools are viewed as local institutions, and school districts are jealous of their prerogatives in directing the programs of these units. The local districts, however, derive their authority from the state, and the state issues the teacher certificates or licenses and establishes codes that specify the academic preparation and training required for teachers and administrators.

The state legislatures establish the general pattern of framework for schools within the state, and a state board of education has general control over the policies and management of the state school system. In 1973-74 every state except Wisconsin had a state board of education for elementary and secondary schools. Seven states had separate boards for vocational education. Each of the fifty states reported a chief state school officer, variously titled superintendent or commissioner of education.

At the local level, the district, a school board consisting of three to nine persons, has the policy making and supervisory authority. Most of the school boards are elected by popular vote, but in some instances they are appointed by government officials. In most of the districts the board appoints a professional administrator, usually with the title of superintendent, to administer the policy for the operation of the public school. At the state level the legislatures have in most cases identified the requirements for board membership, required that meetings, records be open to the public, and items of a similar nature.

A state department of education is attached to the executive branch of the state. The responsibilities of the department include the distribution of state funds, certification of teachers, approving of building plans, reviewing budgets, supervising the development of curriculum and the evaluation of programs, providing in-service teacher education, compiling statistics, making studies and sur-

veys, advising school administrators and boards regarding school laws and regulations.

The states differ in the degree of centralization of authority and control. Local school systems have greater or lesser direct authority, but in the final analysis local districts are agents of the state, established under state statutes, to implement the state's educational responsibility.

The financial support of the schools is based upon the combination of state and local support. At this point in time, state funds account for approximately half of the combined state and local support. The state delegates authority to the local school districts to raise funds by taxation, and the major source of local funds has been through property taxes. The local school districts are governmental units in a limited sense, with their own governing bodies similar to village boards of trustees, town councils, city and county commissioners, or state legislatures.

State funds provide a foundation for local districts in that the state funds supplement local funds in order to provide reasonably adequate educational programs. Districts with limited taxing base may receive proportionally more of the state funds under the foundation system. Some 19 states have implemented school finance reform legislation between 1970 and 1975 in order to provide ways of reducing disparities in per-pupil expenditures among school districts.

While on an average, state and local sources contribute equally to the support of public schools, the proportions differ widely among the states. For example, in 1975-76 Delaware provided over 68 percent of the finances for public schools. On the other hand, New Hampshire provided less than 10 percent, with the remainder coming from local taxes.³⁴

Because states and districts must depend upon tax resources located within their borders, the variation in funding from state to state and from district to district can be very great. Property taxes are the primary sources of income, and the ratio of assessed property valuation per pupil among school districts may show striking differences. For example, in Kansas the district with the highest valuation has \$182.80 per pupil for every \$1.00 that the district with the smallest valuation has. This represents one extreme. At the other extreme, in Rhode Island, the district with the largest assessed valuation has \$2.20 per pupil to \$1.00 for the smallest valuation. Under these circumstances, without very significant aid from the state as a whole, districts with low assessment valuation have limited funds available for the schools in comparison to districts with high evaluation.

The question of possible inequity among districts was brought to the fore in the decision handed down by the California Supreme Court on August 30, 1971. The case, *Serrano vs. Priest*, developed out of the concern of John Anthony Serrano and the condition of schools in East Los Angeles. The principal of an elementary school in which Serrano's two boys were enrolled, called him for a conference. The two boys, according to I.Q. tests, were unusually bright and with high potential. The school, however, in a poor, largely Chicano neighborhood, was, according to the principal, unable to provide the kind of education the two boys deserved. In the weeks that followed, Serrano, in conference with others, decided to bring suit, and in August 1968, on behalf of another group of dissatisfied parents and children, went to the courts with the claim that the means of financing employed in the state of California failed to meet minimum California and federal constitutional requirements in that it was providing substantially inferior educational opportunities to many children, especially black, Spanish-surnamed and other minority children. The contention was the quality of education provided in a particular district was a function of wealth and geographical accident and that under these circumstances school districts were not reasonable units for allocating funds. The suit was turned down twice by local courts but the California Supreme Court decided to review the case.

Among the briefs prepared for the case, one in particular pointed out that education is a "fundamental interest" and thus related to the Equal Protection Clause of the Constitution. It was pointed out, for example, that Beverly Hills had \$50,885 for each student in terms of assessed valuation, while Baldwin Park had only \$3,697. Beverly Hills spent \$1,232 per student, and Baldwin Park spent only \$577 per student, yet Baldwin Park had a tax rate twice as high as that of Beverly Hills. The Court, in its decision, found that there was not constitutional justification for an educational system whose quality was so dependent upon local wealth. By a 6-1 majority, the Court found that the method of funding schools in California "invidiously discriminates against the poor because it makes the quality of a child's education the function of the wealth of his parents and neighbors." The point of this decision is that the level of spending for publicly financed elementary and secondary education cannot be a function of wealth. A state may employ whatever rational approach to spending that it chooses, but it is forbidden to permit either school district wealth or family wealth to effect spending within the district. All of which is to say that public schools must be funded upon the basis of the wealth of the state as a whole.

Further litigation ensued from the Serrano decision, but before the final statement on the implications of Serrano could be made, the United States Supreme Court handed down a 5-4 decision reversing a San Antonio federal court and rejecting the complaint of Demetrio T. Rodriguez challenging the Constitutional validity of the Texas public school financing laws. The position of Rodriguez was that the Texas public school financing system violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because of the unequal treatment of poor school districts. The District Court had directed the State to remedy this situation by adopting a financial scheme whereby variations in wealth among the school districts would not affect spending for the education of any child. The majority opinion of the Supreme Court, which overturned the District Court, held that the Texas public school system did not "operate to the disadvantage of some suspect class" or impinge upon "a fundamental right explicitly or implicitly protected by the Constitution."

Without detailing the arguments by which the Court indicated that the system of district financing in Texas did not operate against the disadvantage of a particular class, I would only go on to say that the Court also addressed itself to the question of whether education is a "fundamental right" in the sense that it is among the rights and liberties protected by the constitution. One particular statement is important: "Nothing this Court holds today in any way detracts from our historic dedication to public education. We are in complete agreement...the grave significance of education both to the individual and to our society cannot be doubted. But the importance of a service performed by a state does not determine whether it must be regarded as fundamental for the purposes of examination under the Equal Protection Clause." The point was made that while education is a significant concern of society it is not explicitly or implicitly guaranteed by the Constitution.

The majority opinion did go on to say that the decision should not be taken as means of lessening concern within the states nor as an approval of the states status quo: "We hardly need add that this court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax."

The issues are far from resolved, and the debates continue regarding the relative responsibility of state and local district in financing and maintaining schools. The trend in states that have engaged in school finance reform is to increase the state's share of school funding. A number of observers of developments in school finance have been advocating full state funding, i.e. channeling tax revenues through the state as a whole to the local districts rather than depending upon local district income. The issue of local control

versus state control inevitably arises in such discussions. Yet some states already are moving toward full funding. Maine has moved from 50 percent state share in the early 1970's to 60 percent in 1978. Rhode Island has proposed full state funding by 1981. In New Mexico the state's share is almost at the level of full funding at this time.

The state of California again came to national attention when in June, 1978, the voters of the state passed Proposition 13. This proposition, placed on the state ballot, turned back property taxes to 1 percent of their 1975-76 assessed market value. The proposition was a tax-limiting provision with three main parts: (1) it set a maximum tax on property of 1 percent of the fair market value; (2) limited growth in assessment of property to no more than 2 percent per year; and (3) required a two-thirds vote of the state legislature to issue any new state tax to substitute for the lost local revenues. The Proposition passed by a 2-1 majority. The action has been referred to as a "taxpayer revolt" and has had profound implications for financing of all state activities in California including education. California ranks third in per-capita state and local taxes, and in recent years residential property values have increased dramatically to the extent that many home-owners' property taxes have doubled and redoubled in recent years.

The effect of Proposition 13 was to shift in dramatic ways the financing of California's schools. To make up for the funds lost in the reduction of property tax revenues, the state had to turn to accumulated surpluses derived from a highly progressive income tax structure. The schools will have reduced expenditures and services, but will probably realize well over 90 percent of their previous year's income. However, for 1978-79, from 65 percent to 70 percent of school funding will come from the state, whereas prior to the passage of Proposition 13, the state provided only 40 to 45 percent of the support of school districts. California suddenly moved into more of a full state funding situation, the long range implications of which can only be a balancing out of per pupil expenditures within the various districts and perhaps ultimately meeting the needs identified by Serrano.

The major issue in state-local relations in elementary and secondary school organization has to do with financing an increasingly expensive program. I have called attention to the fiscal problems of elementary and secondary school districts, because it is at this point that the major concerns are being expressed as we move into the 1980's. The move toward more state involvement in supporting school districts, together with the reduction of the number of school districts, seems to be pointing to the same kind of centralized authority that has developed on a national basis. In striking ways, the state has taken responsibility for maintaining the public school systems.

State and Local Government and Postsecondary Education

During the Colonial period nine colleges were established in what was later to become the United States of America. These institutions were established under the aegis of the colonial governments, but for the most part on the initiative of groups of interested citizens. The legal basis for the establishment of the institutions was at best questionable. Under English practice, the creation of corporations was a prerogative of the Crown, and while each of the colonies had its own set of rights and regulations, it is doubtful that any one of them was given the authority to create corporations.³⁵ Yet, the nine colleges received their charters as corporations in various forms from the states.

Control of these collegiate institutions was vested in a group of persons who did not hold official positions in the institution, a lay board of trustees. Whatever the nature of the charter granted by the colonial government, the first

step in the creation of an institution was to identify a group of persons to take responsibility for securing and managing property, employing staff and overseeing the development of the institution. Harvard College began with such a board appointed by the Great and General Court of the Massachusetts Bay Colony. The second colonial college, William and Mary, began with a self-perpetuating Board of Visitors and provided that the president and professors should constitute a "Body Corporate" when the institution became fully established. The third college, Yale, was called into existence through the efforts of ten principal ministers of the colony who constituted themselves as a board and requested a charter from the General Assembly. The process followed by Yale set the pattern for the six other colleges established in the colonial era.

The place and power of the lay board was firmly indicated by the celebrated Dartmouth College Case in the decision handed down by the Supreme Court of the United States in 1819. Dartmouth had been created out of a small and private foundation for the education of the American Indian. The founder, Eleazar Wheelock, a congregational clergyman, moved the school to New Hampshire, secured land from a colony, sent fund raisers to England, obtained a royal charter and the support of such persons as Lord Dartmouth. The charter allowed Eleazar to name his successor. When John Wheelock, Eleazar's son and named successor, came into conflict with the Trustees, he turned to what had then become the State of New Hampshire. The State took control of the college and renamed it Dartmouth University. The original trustees sued to recover their property, lost the case in the state courts and went to the Supreme Court of the land. In the Supreme Court the state courts were reversed, the trustees were identified as the proper owners of the institution, and the charter was recognized as a binding contract. With the status of trustees firmly established in law, the founding of small colleges throughout the land proceeded with an almost reckless abandon.

The entry of the several states into higher education, however, proceeded slowly for nearly three quarters of a century. Initially, as the former colonies sought to realign themselves into a single nation of sovereign states, some of the states became involved in efforts to establish systems of education at the postsecondary level. Attempts to create state systems by taking control or incorporating existing private institutions into state systems, as in New Hampshire, were short lived, and the resolution of the Dartmouth College Case seems to have had a depressing effect on state efforts to build their own systems. North Carolina, Georgia, Tennessee and Vermont had founded state institutions before 1800, and Vermont had even included reference to a state university in its constitution.

These first state institutions, although created by the states, operated under lay boards of trustees. The University of Georgia, for example, was given a self-perpetuating board and received little direct support or control from the state. Indeed, after 1842, the Georgia legislature for a time ceased providing any financial support for the University. The University of North Carolina also had a self-perpetuating board, and only in 1876, nearly ninety years after its founding, did the University have trustees appointed by the legislature and received direct state appropriations. The University of Vermont was established in 1791, but not until 1810 did the legislature provide the trustees should be elected by both houses of the legislature; until then the University was mostly a private or independent institution.

Twenty-two of the present state universities, some of which had been founded as private or semi-private institutions, were in existence in the early 1860's. They were small and limited in scope. The University of Missouri had been in existence since 1837, but in the 1830's, when it could take advantage of the Morrill Act funds, its total enrollment was only forty-six persons. The University of Minnesota, founded in 1851 and given new life through Morrill Act

funds, numbered two persons in its first graduating class. The University of Wisconsin, established in 1848, also had two persons in its first graduating class. Kansas University opened in 1866 with a faculty of three. When the University of California opened in 1868, it boasted an enrollment of twenty-six, three of whom dropped out before the year was far advanced.

The state systems as such came into existence, practically speaking, after the Morrill Act of 1862. The Act provided federal grants of lands for the support of colleges and universities, and the availability of the grants provided the incentives for states to take more seriously their responsibilities for postsecondary education. But even a half century later, in the early 1900's, some states were still embroiled in debate over whether state tax monies could legitimately be voted for the support of other than common schools. Kentucky, for example, was involved in litigation over whether state taxes could go to support the newly established Agricultural and Mechanical College. Only after the establishment of the University of Kentucky in 1908 and the ruling of the courts that the legislature indeed had the right to create and support a university was the matter laid to rest. But the constitutional power of the legislature to create support for postsecondary education continued to be challenged in other states.

For the most part, state governments make a clear distinction between private, or independent, schools and those directly supported by tax monies. Only the state of New York, in the creation of the Regents of the University of New York, early established state regulation of all education within the borders, including regulation of private, or independent, schools. In all state, however, the process of establishing an institution requires the securing of a charter as a corporation from the state. The degree of regulation for the granting of the charters to corporations has varied widely among the states and the process continues to range from setting highly specific requirements with regard to finance, location, nature of the trustees to having very informal requirements, sometimes little more than a notarized application for a charter with a list of chartering board members. State authority over both private and public institutions has, however, grown during recent years. All fifty states through various agencies have some degree of regulatory control over higher education which determines eligibility for state and federal funds and approval of training programs for various professional groups, particularly teachers in public elementary and secondary systems.

The most significant development in state relations to postsecondary education has been the movement toward the creation of state coordinated systems. Until the 1940's the majority of college students in the United States were enrolled in private or independent institutions. The growth in state-created and supported postsecondary institutions since the 1940's has created new conditions within the states and has led to new forms and structures of governance.

As I have indicated, state-created and supported postsecondary education followed the same governance pattern that had been established during the colonial era in that each institution was established under a separate lay governing board to supervise its operations. The states soon moved away from the creation of self-perpetuating boards to boards which had direct responsibility to the executive branch of the government, through appointment by the governor, or to the people through election. The normal pattern, therefore, was for each institution to have its own board. In time, however, several institutions of similar type within the state were placed under a single board. The first groupings were of normal, or teacher training, schools. Then, various agricultural colleges and institutes were placed under boards for land-grant colleges. In 1905, Florida went a step further and established a single governing board for all tax-supported postsecondary institutions in the state, regardless of type. Iowa followed in 1906. By 1932, eleven states had single governing boards. In a study released in 1952, the Council of State Governments reported that of 367 state institutions

of higher education then in existence, 127 were governed by separate, individual boards. The remaining 240 were grouped in various ways under this jurisdiction of 41 boards. Twelve of the states reported single governing boards for all postsecondary institutions.³⁶ Another study, published seven years later, reported the same number of state-wide governing boards and five coordinating boards. Under the coordinating board structure, each institution retains its own governing board but the state assigns certain functions to the coordinating agency.³⁷ In 1971 there were 19 single state-wide governing boards, 27 governing boards, and four states with voluntary or no state coordinating function. By 1972, there were 21 governing boards and by late 1977, 22 governing boards.³⁸ It appears all states now have some kind of coordinating agency.

Governing boards have responsibility only for state-created and supported institutions, while coordinating boards may also have some responsibility for working with private, or independent, institutions. Developments since 1972, however, have brought private, or independent, institutions into some degree of planning with public institutions in virtually all states. Under the federal Higher Education Amendments of 1972, Section 1202 requires any states that wishes to receive federal assistance under Section 1203, which authorizes grants and assistance for comprehensive state-wide planning, to establish a state postsecondary commission that is broadly and equitably representative of various types of postsecondary educational institutions. States moved slowly in taking advantage of the "1202" funds, but by mid-1978, virtually every state had established such a commission and was involved in some form of state-wide planning activity. Thus, the federal government once again was involved in shaping the approach of states to their educational systems.

By late 1978, accordingly, the United States had in place the mechanisms for developing state-wide systems of education at the postsecondary level. The costs of maintaining the state systems and the continuing demands of the constituencies for more services seem inevitably to be forcing the states into more and more integrated systems with more specific charges going to the several institutions to specialize in some areas and to move back from others.

From 1902 to 1969, direct state expenditures for education increased from just under 13 percent of the state budget to just over 28 percent. A rough estimate would say that on the average, states devote approximately 30 percent of their budget to education. Expenditures for welfare and highways follow closely, with each absorbing well over 20 percent of the state expenditures.³⁹ In periods of fiscal restraint states are forced to establish priorities among these expenditures. As higher educational institutions in the United States now (1979) are experiencing either stabilization or actual decreases in enrollments, the pressures from other agencies are to decrease state support of higher education. This pressure, in turn, leads to attempts to develop a more coordinated approach to meeting the state requirements in education, and in the case of postsecondary education to efforts to restrict some program development and to reduce appropriations for other programs. In the state of Colorado, for example, limitations are being placed upon enrollments in the major universities in order to encourage students to attend institutions that have already experienced significant enrollment decreases. Efforts are also made to consolidate certain programs. The latest proposal in Colorado is to center work in professional education at the University of Northern Colorado and to eliminate almost entirely any work in education at the University of Colorado area. The Governor of Colorado has proposed phasing out the College of Education at Colorado and channeling students in the professional field to the University of Northern Colorado. Other states are experiencing similar pressures.

National Planning

The United States of America does not have the equivalent of a Ministry of Education, but it does have within the federal structure an Office of Education.

The bill creating a Department of Education was signed into law on March 2, 1867. Henry Barnard, Secretary of the Board of Education in Rhode Island, was appointed the first Commissioner. It is said that he was the primary force in effecting the creation of the office. On a trip to Washington, D.C., he had tried in vain to secure some accurate and comprehensive information on the status of education in the United States; no government office could provide any reliable information. He began a personal lobbying effort for the establishment of a government agency to monitor developments in education in the United States.

The bill establishing the agency was introduced by Representative James A. Garfield, who later became President of the United States. The Department was assigned primarily to fact-gathering and information-disseminating tasks, but its charge also included the statement, "Otherwise promote the cause of education throughout the country."

There was considerable opposition among educational administrators throughout this country about cooperating and supplying information and data to Washington. The opposition was reflected in Congressional action on June 20, 1868, when the Department was reduced to an Office and placed under the Department of the Interior, effective at the beginning of the 1869 fiscal year. Two years later the name was changed to Bureau of Education, further reducing its status. In 1930 the original designation, Office of Education, was restored. From 1869 to 1939, the Office/Bureau remained within the Department of the Interior.

When the Federal Security Agency was established on July 1, 1939, under the Reorganization Act of 1939, all federal programs in the field of health, education and social security were to be administered under this new agency. This new agency consisted at first of the Office of the Administrator, a Public Health Service, a Civilian Conservation Corps--an agency organized to provide employment for American youth and advance conservation from 1933 to 1942, the Office of Education and the Social Security Board. The following year, under another Reorganization Plan, the Federal Security Agency was enlarged to include the Food and Drug Administration, transferred from the Department of Agriculture; certain hospitals, and federal functions related to Howard University. Under Vocational Rehabilitation Act Amendments of 1943 functions relating to that legislation were assigned to the Federal Security Administrator. Other restructuring took place between 1941 and 1953, when in the latter year the Department of Health, Education, and Welfare was created.

Within the Department of Health, Education, and Welfare, the Office of Education continued four major functions: (1) Collecting and disseminating education data; (2) Administering grants under various federal legislative programs; (3) Conducting education research and studies; (4) Providing consultative services and sponsoring conferences.

Recent years have seen further restructuring of the Office. The Education Amendments of 1972 created the Education Division of HEW and the National Institute of Education. An Assistant Secretary for Education under the Department of Health, Education, and Welfare administers the Education Division. The Division is responsible for the National Center for Education Statistics, which is now charged with the collection and diffusion of all education statistics. A large part of the responsibility of the Office of Education in recent years has been the administration of programs of financial assistance and the determination of eligibility of higher institutions for federal grants.

When the ninety-fifth Congress adjourned in late 1978, a proposal to establish a federal Department of Education had not reached the floor of Congress, although considerable effort had been expended to move the bill forward. During the current Congress President Carter is expected to place the establishment of a separate department near the top of his legislative agenda. It is expected that the Senate will report a bill similar to the one that was reported at the last Congress and will pass the bill. How quickly a bill can be reported out of the House Rules Committee for House action, however, is much more uncertain.

This is not the first time efforts have been made to establish a Department of Education. There have been frequent efforts over the years to provide more visibility for education within the federal government. In 1919 the Smith-Towner Bill was introduced calling for Department of Education in the Office of the Secretary of Education as a means of providing federally to education in the states and to develop standards for participation in federal funding. An initial appropriation of \$100 million annually, to be directed toward removal of illiteracy, Americanization, salaries of teachers, physical and health education, and teacher preparation. Even though referred to as an emergency measure, it failed to gain sufficient votes for passage.

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24. Bill of Sale, Ohio and Scioto Companies.
25. Babbidge and Rosenzweig, op. cit., p. 23.
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27. The National Foundation Act of 1950 (Public Law 507, 81st Cong.). See U.S. National Science Foundation, First Annual Report, 1950-51, p. 2 and Richard G. Axt, The Federal Government and Financing Higher Education (New York: Columbia University Press, 1952), pp. 116 ff.
28. National Defense Education Act of 1958 (Public Law 865, 85th Cong.), Section 102.
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